

## Message Text

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ACTION STR-07

INFO OCT-01 STRE-00 ISO-00 IO-13 AGRE-00 CEA-01  
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10  
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00  
AID-05 SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02  
OMB-01 DOE-15 AF-10 ARA-10 EA-10 EUR-12 NEA-11  
OIC-02 JUSE-00 /169 W  
-----009364 031807Z /43

P 031721Z MAY 78  
FM USMISSION GENEVA  
TO SECSTATE WASHDC PRIORITY 9175  
INFO AMEMBASSY BRUSSELS

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USMTN USEEC

STR FOR ACTION

STR PASS CODEL

E.O. 11652: N/A  
TAGS: MTN, ETRD, EEC  
SUBJECT: CUSTOMS VALUATION - EC COMMENTS ON U.S. DRAFT

1. SUMMARY: MTN DEL RECEIVED TODAY DRAFTING COMMENTS ON U.S. SUGGESTED CHANGES TO EC VALUATION DRAFT (BEING HAND-CARRIED TO WASHINGTON BY MATTHIESEN). IN GENERAL, EC COMMENTS ARE NOT HELPFUL, AS EC DEL APPEARS TO CONTINUE TO SUFFER FROM PRIDE OF AUTHORSHIP. EC DEL DID ATTEMPT REDRAFT OF ARTICLE 6. END SUMMARY.

2. ESSENTIALLY THE EC HAS ADDED TO ITS DRAFT (MTN/NTM/W/122) SOME, BUT NOT ALL, U.S. SUGGESTED CHANGES IN BRACKETS.

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(A) ARTICLE 1 - U.S. PARA INSERTED IN BRACKETS AS ALTERNATIVE TO UNBRACKETED EC INTRODUCTORY PARA. ARTICLE 1(A)- U.S. PRICE DEFICIENCY LANGUAGE INSERTED IN BRACKETS. EC ARTICLE 1(B-D) MAINTAINED - U.S. 1(B-C) BRACKETED.

(B) EC ARTICLE 2(1)(A) - U.S. CHANGE INSERTED IN

BRACKETS. EC ARTICLE 2(1)(B)BRACKETED BUT WITH FOOT-  
NOTE INDICATING THE ESSENTIALITY OF THE PARA. EC  
ARTICLE 2(2) - ACCEPTS "PRUDENT BUYER RULE" AND DROPS  
"AVERAGING" PARA. BRACKETS U.S. DEFINITION OF "IDENTICAL"  
"WHICH IS REGARDED BY EEC AS IMPOSSIBLE". EC ARTICLE  
2(3) MAINTAINED.

(C) EC ART 3 - SAME COMMENTS AS IN ART 2

(D) EC ART 4 - BRACKETED WITH FOOTNOTE INDICATING  
EC SUPPORT OF CONCEPT.

(E) EC ARTICLE 5 - BRACKETED WITH FOLLOWING EC FOOTNOTE:  
"EEC UNDERSTANDS THAT U.S. IS OF THE OPINION THAT THE  
DELEGATION OF POWERS TO A MINISTER TO DETERMINE THE  
MANNER OF VALUATION (NOT THE VALUE ITSELF) WOULD NOT  
BE CONSISTENT WITH U.S. CONSTITUTION. AT PRESENT  
U.S. CUSTOMS OFFICIALS HAVE THE POWER TO DETERMINE THE  
VALUE IN SUCH REASONABLE MANNER AS THEY MAY SEE FIT  
AND THEIR DECISION IS FINAL AND YET THIS IS NOT UN-  
CONSTITUTIONAL. EEC WOULD LIKE CONFIRMATION OF U.S.  
VIEW ON 'CONSTITUTIONALITY' OF PROPOSED ARTICLE 5".

(F) EC ARTICLE 6 - NO CHANGE.

(G) U.S. ARTICLE 6 - REDRAFTED AS FOLLOWS:  
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BEGIN BRACKETS ARTICLE 6

1. IN DETERMINING WHETHER THE PRICE PAID OR PAYABLE  
IS ACCEPTABLE WITHIN THE PROVISIONS OF ARTICLE 1,  
THE FACT THAT THE BUYER AND SELLER ARE RELATED  
WITHIN THE MEANING OF ARTICLE 16 SHALL NOT IN ITSELF  
BE GROUNDS FOR REGARDING THE PRICE PAID OR PAYABLE  
AS UNACCEPTABLE. IN SUCH CASES, THE CIRCUMSTANCES  
SURROUNDING THE SALE SHALL BE EXAMINED AND THE  
PRICE SHALL BE ACCEPTED WHENEVER IT IS ESTABLISHED  
THAT THE RELATIONSHIP IN ITSELF HAS NOT INFLUENCED  
THE PRICE. THE PRICE PAID OR PAYABLE SHALL BE  
DEEMED TO BE AN ACCEPTABLE PRICE AND THE GOODS VALUED  
IN ACCORDANCE WITH ARTICLE (1) WHERE IT IS ESTABLISHED  
THAT THE BUYER AND SELLER, ALTHOUGH RELATED WITHIN  
THE MEANING OF ARTICLE 16, ORGANISE THEIR BUSINESS  
IN SUCH A WAY AS TO BE EFFECTIVELY UNRELATED FOR  
THE PURPOSES OF INTERNATIONAL TRADE. (I)  
2. WITHOUT PREJUDICE TO PARAGRAPH 1 OF THIS  
ARTICLE, THE PRICE PAID OR PAYABLE SHALL BE DEEMED  
TO BE AN ACCEPTABLE PRICE AND THE GOODS VALUED IN

ACCORDANCE WITH THE PROVISIONS OF ARTICLE 1 WHENEVER  
IT IS ESTABLISHED THAT SUCH PRICE IS NO LOWER THAN  
ONE OF THE FOLLOWING:

(1) THE CUSTOMS VALUE OF IDENTICAL GOODS AS  
PROVIDED BY ARTICLE 2.

(2) THE CUSTOMS VALUE OF SIMILAR GOODS AS PROVIDED  
BY ARTICLE 3

(3) THE CUSTOMS VALUE OF GOODS SOLD OR OFFERED FOR  
SALE AFTER IMPORTATION AS PROVIDED BY ARTICLE 4.

BEGIN BRACKETS (II)(4) THE PRICE PAID OR PAYABLE  
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INFO OCT-01 EUR-12 IO-13 ISO-00 STRE-00 AGRE-00 CEA-01  
CIAE-00 COME-00 DODE-00 EB-08 FRB-03 H-01 INR-10  
INT-05 L-03 LAB-04 NSAE-00 NSC-05 PA-01 CTME-00  
AID-05 SS-15 ITC-01 TRSE-00 ICA-11 SP-02 SOE-02  
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JUSE-00 /169 W

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IN SALES TO UNRELATED BUYERS OF IDENTICAL OR  
SIMILAR GOODS FOR EXPORT TO OTHER COUNTRIES WITH  
APPROPRIATE ADJUSTMENTS FOR CONDITIONS OF DELIVERY.  
END BRACKETS

BEGIN BRACKETS (II)(5) THE PRICE PAID OR PAYABLE  
IN SALES TO UNRELATED BUYERS OF IDENTICAL OR  
SIMILAR GOODS IN THE EXPORTING COUNTRY WITH ADJUST-  
MENTS FOR COSTS NOT INCURRED IN EXPORT SALES. END  
BRACKETS

BEGIN BRACKETS (II)(6) THE PRICE PAID OR PAYABLE  
IN SALES OF GOODS FROM OTHER COUNTRIES WHICH WOULD  
BE SIMILAR TO THE IMPORTED GOODS EXCEPT FOR A DIFFER-  
ENT COUNTRY OF ORIGIN. END BRACKETS  
BEGIN BRACKETS (II)(7) THE COMPUTED VALUE AS  
PROVIDED IN ARTICLE 5. END BRACKETS END BRACKETS

FOOTNOTES:

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(I) SUBJECT TO AN INTERPRETATIVE NOTE WHICH WOULD  
GIVE GUIDANCE EG. WHERE THE BUYER AND SELLER ARE  
ABLE FREELY TO MAKE PRICES BETWEEN THEMSELVES THE  
BUYER IS NOT OBLIGED TO BUY FROM THE SELLER IN QUES-  
TION NOR THE SELLER TO SELL TO THE BUYER IN QUESTION.

(II) THE USE OF SUCH TESTS IS HIGHLY QUESTIONABLE  
BECAUSE THE PRICES OR VALUES DO NOT AS A GENERAL RULE  
BEAR ANY RELATION TO THE PRICE OF GOODS FOR EXPORT  
TO THE COUNTRY OF IMPORTATION.

(H) EC ARTICLE 7 - EC DRAFT (A-F) WITH U.S. ADDITION  
BRACKETED.

3. COVER LETTER TO EC DRAFT STATES THAT SINCE EC IS  
OPPOSED TO CONCEPT OF COMPUTED VALUE AS A METHOD OF VALUA-  
TION, EC HAS NOT ATTEMPTED TO REDRAFT U.S. LANGUAGE.

4. IN TELEPHONE CONVERSATION WITH CHUMAS, SUBSEQUENT TO  
RECEIPT OF EC PAPER, MTN DEL (NEWKIRK) EXPRESSED U.S.  
DISAPPOINTMENT WITH EC ATTITUDE. NEWKIRK FURTHER INDI-  
CATED THAT ABSENT FLEXIBILITY ON PART OF EC WE HAD DIFFI-  
CULTY ANTICIPATING MUCH PROGRESS WEEK OF MAY 8. U.S.  
DEL AND EC DEL DID AGREE ON FOLLOWING SCHEDULE FOR WEEK OF  
MAY 8: MAY 8 - EC BILATERALS WITH NORDICS, JAPANESE,  
CANADIANS; AFTERNOON OF MAY 9, BILATERAL WITH U.S.;  
REST OF WEEK - PLURILATERAL SESSIONS ARRANGED BY EC.

5. MTN DEL COMMENT: ABSENT SIGNIFICANT CHANGE OF  
ATTITUDE ON PART OF EC NEGOTIATORS, MTN DEL FORESEES  
CONSIDERABLE DIFFICULTY IN AGREEING, IN THE SHORT TERM,  
ON A COMBINED US/EC DRAFT FOR PLURILATERAL DISCUSSION PUR-  
POSES. U.S. DEL HAS DISTRIBUTED TO NORDIC, CANADIAN,

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AND JAPANESE DELS U.S. SUGGESTED DRAFT (COLUMN 2, TPSC  
78-46) AS A "CONCEPTS" PAPER BEING REFINED IN WASHINGTON.  
MTN DEL SUGGESTS THAT IF NO FURTHER PROGRESS IS MADE IN  
US/EC BILATERAL ON MAY 9, WE PRESENT OUR SUGGESTIONS,  
AS REFINED, TO PLURILATERAL GROUP AS MEANS OF DEVELOPING  
A NEGOTIATING DOCUMENT. END COMMENT.

7. DRAFTED BY SHELLEY. MCDONALD

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 jan 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AGREEMENT DRAFT, AMENDMENTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 03 may 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
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**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Expiration:**  
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**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
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**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
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**Status:** NATIVE  
**Subject:** CUSTOMS VALUATION - EC COMMENTS ON U.S. DRAFT  
**TAGS:** ETRD, US, MTN, EEC  
**To:** STATE  
**Type:** TE  
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**Review Markings:**  
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Declassified/Released  
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